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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

WAYMO LLC,

CASE NO. 3:17-cv-00939

Plaintiff,

VS.

UBER TECHNOLOGIES, INC.;  
OTTOMOTTO LLC; OTTO TRUCKING LLC,

## Defendants.

**PLAINTIFF WAYMO LLC'S PROPOSED  
JURY INSTRUCTION REGARDING  
DEFENDANTS' VIOLATION OF THE  
COURT'S EXPEDITED DISCOVERY  
ORDER [Dkt. 61] AND PRELIMINARY  
INJUNCTION ORDER [Dkt. 426]**

**REDACTED VERSION OF DOCUMENT  
SUBMITTED UNDER SEAL**

Judge: The Honorable William Alsup

Trial Date: October 10, 2017

1       **I.      The Court's Directive Concerning a Jury Instruction as a Possible Remedy for**  
 2       **Defendants' Failure to Comply with the Court's Orders**

3           At the August 16 hearing on Plaintiff Waymo LLC's ("Waymo") Motions for an Order to  
 4 Show Cause, the Court stated:

5           But I am inclined -- but I won't rule that yet -- to tell the jury exactly this scenario.  
 6           That he was ordered to come clean, did not come clean. Ordered to come clean  
 7 again, did not come clean. And finally, in June and July, comes clean. These big  
 8 firms, these big companies, they -- I can't regulate everything, but I can do this. I can  
 9 tell the jury what they're up against, what we're up against in this -- this -- where  
 10 people hide the ball. I don't know if Mr. González -- I know Mr. González. He is an  
 11 honorable guy. Maybe his firm did this; maybe Uber did it. I don't know. But I'm  
 12 inclined to let the jury know what happened here. And they can take this into  
 13 account in evaluating the bona fides of both sides here ... **THE COURT:** Here's one  
 14 thing that would be useful to me. After the hearing, I would like for Waymo to write  
 15 out a proposed jury instruction that would say in non-argumentative terms what  
 16 happened on this whole sequence in chronological order, so that we can begin the  
 17 process of considering whether to give such an instruction to the jury. And then give  
 18 that to the other side. And in due course, the judge is going to decide whether to give  
 19 some instruction along those lines. I have not decided that yet. But that does seem  
 20 to be the most likely, if any, relief. I have not decided that yet.

21           (Dkt. 1261 at 27:2-15 and 33:8-18.)

22           In accordance with the Court's directive, Waymo submits this proposed jury instruction regarding  
 23 Defendants' violations of the Court's Expedited Discovery Order and Preliminary Injunction Order.

24       **II.     Proposed Jury Instruction**

25           This Court issued an Order requiring Defendants Uber, Ottomotto, and Otto Trucking to return to  
 26 Waymo, by no later than March 31, 2017, all documents relating to any Waymo files taken by Anthony  
 27 Levandowski from Waymo. The Court's Order also required Defendants to disclose whether any of those  
 28 documents had been destroyed. Defendants disobeyed that Order.

29           Uber and Ottomotto had in their control documents relating to the Waymo files taken by Anthony  
 30 Levandowski from Waymo, but did not disclose to Waymo or the Court that these documents existed. All  
 31 three Defendants also knew that other documents relating to the taken Waymo files had been destroyed,  
 32 but did not disclose that to Waymo or the Court.

33           This Court issued a second Order requiring Defendants to return to Waymo, by no later than May  
 34 31, all documents relating to any Waymo files taken by Anthony Levandowski from Waymo. Uber and

1 Ottomotto disobeyed that Order as well. As of the May 31 deadline, Uber and Ottomotto had in their  
 2 control documents relating to files taken by Anthony Levandowski from Waymo, but did not disclose to  
 3 either Waymo or the Court that these files existed.

4       On July 3, 2017, this Court issued a third Order, this time requiring Uber and Ottomotto's agents at  
 5 the law firm of Morisson & Foerster and their consulting firm Stroz Friedberg to show "why they are not  
 6 in violation of orders herein" requiring production of documents relating to Waymo files taken by Mr.  
 7 Levandowski from Waymo. In response to that Order, for the first time Uber and Ottomotto's agent  
 8 Morrison & Foerster revealed that it had possessed since March 2017, before the deadline of the Court's  
 9 first Order, documents relating to Waymo files taken by Anthony Levandowski from Waymo. Morrison  
 10 & Foerster said that it had received these documents from Uber and Ottomotto's other agent, Stroz  
 11 Friedberg, which had been in possession of them since March 2016. Morrison & Foerster's possession of  
 12 those documents should have been disclosed in response to the Court's prior Orders, and Defendants  
 13 disobeyed those Orders by failing to do so.

14       In addition, as part of its first Order, this Court also required Defendants Uber, Ottomotto, and  
 15 Otto Trucking to provide to Waymo and the Court, by no later than June 23, a complete and  
 16 chronologically organized log of all oral and written communications – including meetings, phone  
 17 calls, emails, and text messages – in which Anthony Levandowski discussed LiDAR with any of  
 18 Defendants' employees. Defendants disobeyed that Order too. As of the June 23 deadline,  
 19 Defendants failed to disclose the existence of hundreds of communications between Defendants and  
 20 Mr. Levandowski relating to LiDAR that Defendants knew or should have known existed.

21       Finally, on August 22, 2017, Uber and Ottomotto's agent Stroz Friedberg revealed for the first  
 22 time that it was storing [REDACTED] from Mr.  
 23 Levandowski that should have been disclosed much earlier. This late disclosure violated the Court's prior  
 24 Orders and the information should have been disclosed in response to the Court's July 3, 2017 Order.

25       In determining the trustworthiness of Defendants' witnesses, attorneys, and agents, you may,  
 26 but are not required to, consider the fact that Defendants and their agents disobeyed these Court  
 27 Orders to disclose the existence and destruction of documents relating to Waymo files that Anthony

1 Levandowski took from Waymo and to disclose the existence of communications between Mr.  
2 Levandowski and Defendants' employees relating to LiDAR.

3 DATED: September 7, 2017 QUINN EMANUEL URQUHART & SULLIVAN, LLP

4 By /s/ Charles K. Verhoeven

5 Charles K. Verhoeven  
6 Attorneys for WAYMO LLC

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